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Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

|                                  |   |                                  |
|----------------------------------|---|----------------------------------|
| RAYMOND WARE,                    | ) | CIVIL NO. 04-00671 HG/LEK        |
|                                  | ) |                                  |
| Plaintiff,                       | ) | <b>DECLARATION OF MICHAEL F.</b> |
|                                  | ) | <b>NAUYOKAS IN SUPPORT OF</b>    |
| vs.                              | ) | <b>ATTORNEY FEE MOTION;</b>      |
|                                  | ) | <b>EXHIBITS A, AND B;</b>        |
| MICHAEL CHERTOFF, Secretary,     | ) | <b>CERTIFICATE OF SERVICE</b>    |
| Department of Homeland Security; | ) |                                  |
| JOHN DOES 2-5,                   | ) |                                  |
|                                  | ) |                                  |
| Defendants.                      | ) |                                  |
| _____                            | ) |                                  |

**DECLARATION OF MICHAEL F. NAUYOKAS**  
**IN SUPPORT OF ATTORNEY FEE MOTION**

|                          |   |     |
|--------------------------|---|-----|
| STATE OF HAWAII          | ) |     |
|                          | ) | SS. |
| HONOLULU CITY AND COUNTY | ) |     |

I, MICHAEL F. NAUYOKAS, hereby declares under the penalty of perjury  
that:

1. I am an attorney duly licensed to practice law in the State of Hawaii

and I am also permitted to practice before the United States District Court for the District of Hawaii.

2. I am an attorney specializing in labor and employment law since 1989. I have also taught this subject area at The William S. Ricardson School of Law, Hawaii Pacific University, the University of Hawaii College of Business Administration and the Kapiolani Community College Legal Education Department. Attached, as Exhibit A is an accurate copy of my resume. I have handled and assisted in a number of Federal employee cases; and obtained the largest Title VII settlement (in excess of \$400,000) against the Department of Defense in the State of Hawaii for a Federal Civilian employee.

3. My current hourly rate for representing parties in labor and employment cases is \$315.00 per hour. This is the fee charged to clients who pay by the hour for representation and are generally billed monthly. In addition, there are charges for photocopying, deposition costs and all costs of litigation including expert fees, which are paid by the client. I also sometimes represent individuals in employment matters on a contingent fee basis. Contingency fees of 33⅓-40% if a case is settled, 40% if it is tried, and 50% if it is appealed and any fees, if a fee shifting statute exists, are standard in this community. To compensate for the risk of nonpayment in contingent fee cases, it is necessary that the courts award a

multiplier or enhancement for the contingency of nonpayment. Fired employees without significant financial resources have much less attractive cases than their employers who can afford to pay hourly bills on a regular basis. It is important for this taken into account, as the contingent risks involved in representing employees are high.

4. In April 1997, I conducted a survey of partners in the majority of Honolulu law firms that have partners that specialize in labor and employment law. The range then was \$200.00 per hour to \$300.00 per hour. In 2002, according to Pacific Business News, the range was from \$200 - \$450 per hour. In 2007, it was \$250.00 to \$510.00. The more senior partners with 25-30 years experience were at the upper end of this range. Among the firms surveyed were:

- a. Marr Jones & Pepper (now Marr Jones)
- b. Law Offices of David Gierlach
- c. Carlsmith Ball Wichman Case & Ichiki (now Carlsmith Ball)
- d. Verner Lipfert Barnhard McPherson & Hand
- e. Goodsill Anderson Quinn & Stifel
- f. Torkildson Katz Fonseca Jaffe Moore & Hetherington (now Torkildson Katz Moore)
- g. Simons & Ichinose (now Law Offices of David Simons)

- h. Bays Deaver Hiatt (now Bays Deaver Lung Rose & Holma)
- i. Law Offices of Jerry Hiatt
- j. Dwyer Imanaka (now Dwyer Schraff, Meyer, et al.)
- k. Jossem Toyofuku & Clark (now Dwyer)


See attached "Law Firms" as Exhibit B.

It is my conclusion, based upon my personal knowledge of the long-term experience, background, and expertise of Daphne E. Barbee, who was one of the first Hawaii Civil Rights Commissioners (1989) and who was the first trial counsel for the EEOC Honolulu office (and whom I have also heard lecture at NELA and EEOC seminars) that she has over 27 years of litigation experience and should receive the prevailing market rate for professionals of similar experience and background.

5. It is my further understanding that the hourly rate of \$350.00 sought by attorney Daphne Barbee is at or below the prevailing market rate for professionals in this community of similar experience and background.

Further declarant sayeth naught.

DATED: Honolulu, Hawaii, 4-3-08.

  
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MICHAEL F. NAUYOKAS